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AND

INTERNATIONAL ARBITRATION

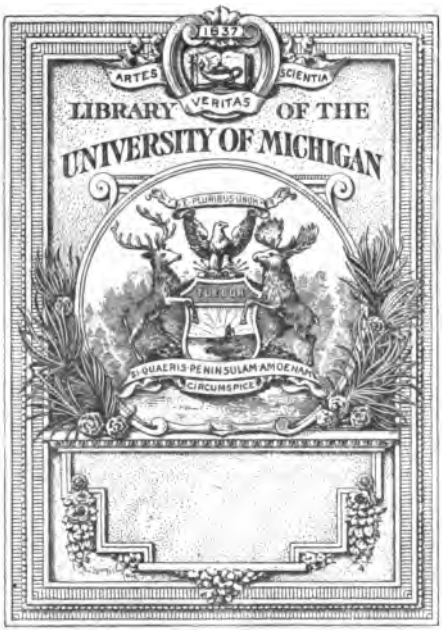
BY

PROF. JOHN BASSETT MOORE,
Columbia College, New York City.

From Report of the American Historical Association for 1891, pages 65-85.
Senate Miss. Doc. No. 173, 52d Congress, 1st Session.

WITH ADDITIONS.

BOSTON:
THE AMERICAN PEACE SOCIETY.
1896.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THE UNITED STATES AND INTERNATIONAL ARBITRATION.

I.—ARBITRATIONS OF THE UNITED STATES.

In the conduct of its foreign relations, the Government of the United States has exerted a potent influence upon the development of international law. In the early dawn of its existence, when the rights of neutrals were little respected, Mr. Jefferson, as Secretary of State under Washington, announced for its guidance certain rules of neutral duty so broad and progressive that succeeding generations have not outgrown them. By persistent effort it has secured a wide recognition of the right of expatriation. It has also contributed to the establishment of the system of extradition. But it is not the least of its achievements that it has so constantly lent the weight of its influence and example to the substitution of reason for force in the adjustment of disputes among nations that international arbitration may be said to have been a prominent feature of its policy.

The main purpose of this paper is to present, as briefly as possible, a general view of the arbitrations of the United States, and of their subjects, forms of constitution, and results. This the writer has been enabled to do by a study of their history and proceedings, for the most part unpublished, which he hopes hereafter to make available.

The first trial by the United States of the method of arbitration was made under the treaty with Great Britain

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of 1794, commonly called the Jay Treaty, which by its fifth, sixth, and seventh articles, respectively, provided for three mixed commissions. That under the fifth article was organized to settle a dispute as to what river was intended under the name of the River St. Croix, which was specified in the Treaty of Peace of 1783 as forming part of our northeastern boundary. This Commission was composed of three members, each Government appointing one, and these two choosing a third. The first meeting was held at Halifax, August 30, 1796, and in order to attend it the American commissioner was forced to hire a vessel specially to transport him from Boston to Halifax, since no commercial intercourse was at the time allowed between the United States and British North America in American bottoms, and there was risk of interruption by hostile cruisers if he sailed in a British vessel, Great Britain being then at war with France. The Commissioners rendered an award at Providence, R. I., October 25, 1798, holding that the Schoodiac was the river intended under the name of the St. Croix.

The commission under the sixth article of the Jay Treaty was organized to determine the compensation due to British subjects in consequence of impediments which certain of the United States had, in violation of the provisions of the Treaty of Peace, interposed to the collection of bona fide debts by British creditors. This commission, which was composed of five members, two appointed by each Government, and the fifth designated by lot, met in Philadelphia in May, 1797. The last meeting was held July 31, 1798, when the American commissioners withdrew. Besides diversities of opinion on questions of law, the discussions at the board developed personal feel-

ing, which was constantly inflamed by Mr. Macdonald, one of the British commissioners, who made it a point of duty freely to express all his opinions. The final rupture was caused by his submitting an unnecessary resolution which declared that from the beginning of the Revolution down to the Treaty of Peace the United States, whatever may have been their relations to other powers, stood to Great Britain in an attitude of rebellion. As it has always been held by the United States to be unquestionable that the Treaty of Peace did not grant their independence, but merely recognized it as a condition existing from the 4th of July, 1776, the date of its declaration, the American commissioners regarded the resolution as gratuitously offensive. Nevertheless, when, a few days after their withdrawal, they sent a statement of their motives to their former British colleagues, the latter began their reply by saying: "We had yesterday the honor of receiving your letter of fifty-five pages." And a further response, evidently designed to be still more sarcastic, began: "Your suspension of our official business having left us at leisure for inferior occupations, we have again perused your long letter of the 2d instant." Both these communications were doubtless drawn by Mr. Macdonald, since they bear the impress of his style and are chiefly devoted to a vindication of his conduct. The claims which the commission failed to adjust were settled by a treaty concluded January 8, 1802, under which the British Government accepted the sum of £600,000 in satisfaction of its demands.

But the most important as well as the most interesting of the commissions under the Jay Treaty was that which sat at London under the seventh article. The American

commissioners were Christopher Gore and William Pinkney; the British commissioners, John Nicholl, an eminent civilian, afterward succeeded by Maurice Swabey, and John Anstey; the fifth commissioner, chosen by lot, was Jonathan Trumbull, who had accompanied Mr. Jay to England when he negotiated the treaty. In order to avoid the misfortune of having a partisan as fifth commissioner, the four appointive members of the board adopted a happy expedient. In accordance with the requirements of the treaty, they first endeavored to select a fifth commissioner by agreement, and for that purpose each side presented a list of four persons; but as neither side would yield, it became necessary to resort to the alternative of casting lots. The next step, according to common practice, would have been for each side to place in the urn a name of its own independent selection, with the chances in favor of his being a partisan. But at London each side selected its name from the list of four made out by the other with a view to a mutual agreement, and the result was that a well-disposed man became the fifth commissioner.

One of the first questions raised before the commission was that of its power to determine its own jurisdiction in respect of the several claims presented for its decision. The British commissioners denied the existence of the power, and absented themselves from the board, till Lord Chancellor Loughborough, to whom the question was submitted, declared "that the doubt respecting the authority of the commissioners to settle their own jurisdiction was absurd, and that they must necessarily decide upon cases being within or without their competency."

Important questions of law arose before the board in

relation to contraband, the rights of neutrals, and the finality of the decisions of prize courts. These were all discussed with masterly ability, especially by Mr. Pinkney. His opinions as a member of the board Mr. Wheaton pronounced to be "finished models of judicial eloquence, uniting powerful and comprehensive argument with a copious, pure, and energetic diction." And they are almost all we possess, in a complete and authentic form, of the legal reasoning of the only advocate to whom, so far as we are informed, Chief Justice Marshall ever paid the tribute of an enthusiastic encomium in a formal opinion of the Supreme Court. The sessions of the board were brought to a close Feb. 24, 1804, all the business before it having been completed. It was, however, in actual session only part of the period its existence nominally covers. Besides other interruptions, there was an entire suspension of its proceedings from July 30, 1799, to Feb. 15, 1802, pending the diplomatic adjustment of the difficulty caused by the breaking up of the commission at Philadelphia.

Beginning with the arbitrations under the Jay treaty, every vexatious question between the United States and Great Britain that has since arisen, except the extraordinary complications growing out of the Napoleonic wars and leading up to the war of 1812, has yielded to methods of peace, arbitration being adopted where direct negotiation failed.

Like the Jay Treaty, the Treaty of Ghent, of Dec. 24, 1814, which restored amity between the two countries, provided for three arbitrations. The first, under article 4, related to certain islands in Passamaquoddy Bay, the title to which, it was stipulated, should be determined by

two persons, one appointed by each Government; and it was provided that, if they should disagree, the points of difference should be referred to a friendly sovereign or state. The commissioners held their first meeting at St. Andrews, New Brunswick, Sept. 23, 1816, and at their last, in the city of New York, Nov. 24, 1817, they rendered a final award.

By the fifth article of the Treaty of Ghent, an arbitration similar in constitution to that under article 4 was provided for the ascertainment of the northeastern boundary of the United States from the source of the river St. Croix, along a certain described course, to the river St. Lawrence. The commission under this article held its first meeting at St. Andrews Sept. 23, 1816, and its last in the city of New York April 13, 1822. Failing to agree, the commissioners made separate reports to their Governments, and, by a convention concluded Sept. 29, 1827, the points of difference were referred to the King of the Netherlands. His award, dated Jan. 10, 1831, the two Governments agreed to waive, since it assumed to make a new line in place of that described in the treaties.

The third commission under the Treaty of Ghent was organized under articles 6 and 7. Under the sixth article, its duty was to determine the northern boundary of the United States along the middle of the Great Lakes and of their communications by water to the water communication between Lakes Huron and Superior; and under the seventh article, to determine the line from that point to the most northwestern point of the Lake of the Woods. This commission was composed of two members, one appointed by each Government. On June 18, 1822, they reached an agreement under article 6; but on the line

described in article 7 they failed to concur, and it was finally determined, as was the unsettled boundary under article 5, by the treaty of Aug. 9, 1842, generally known as the Webster-Ashburton Treaty.

In this relation it may be stated that the boundary from the northwest angle of the Lake of the Woods to the Rocky Mountains, on the forty-ninth parallel of latitude, under the treaty of 1846, was determined by a joint commission, of which the American member was appointed under an act of Congress of March 19, 1872.

By the first article of the Treaty of Ghent it was agreed that all territory, places and possessions taken by either party from the other during the war, or after the signing of the peace, should, with the exception of the disputed islands in Passamaquoddy Bay, the title to which was to be determined by arbitration, be restored without delay, and without the destruction or carrying away of any public property, or of any slaves or other private property. Differences having arisen as to Great Britain's performance of the obligation touching slaves, it was agreed by the fifth article of the treaty of Oct. 20, 1818, to refer the dispute to the Emperor of Russia. On April 22, 1822, the Emperor decided that Great Britain had failed to keep her obligation and must make indemnity, and on the 12th of the ensuing July a convention was concluded under his mediation for the appointment of a commission to determine the amount to be paid. This commission was composed of a commissioner and an "arbitrator" appointed by each Government—four persons in all; but the two commissioners were first to examine the claims and endeavor to reach a decision, and, if they failed to agree, then to draw by lot, in each case of divergence, the name

of one of the "arbitrators" to decide between them. This repetitious choice of an umpire by lot was not likely to promote consistency of decision; but the two commissioners, having met on Aug. 25, 1823, succeeded by Sept. 11, 1824, in agreeing on an average value for slaves taken from each State or district, and they subsequently concurred on other points. They held their last session March 26, 1827, their functions having been terminated by the ratification of a convention concluded at London Nov. 13, 1826, under which Great Britain paid $1,204,-960 in full settlement of all the claims.

As we have already mentioned the reference of the northeastern boundary dispute to the King of the Netherlands, under the convention of 1827, we come now to the convention concluded at London, February 8, 1853, for a general settlement of claims pending between the United States and Great Britain. Under this convention each Government appointed a commissioner, and the two commissioners chose an umpire. This responsible post was first offered to ex-President Van Buren, who declined it, and then to Joshua Bates, an American, but a member of the house of the Barings, who accepted the trust and faithfully discharged it. Many important decisions were pronounced by this commission, some of which touched our rights in the fisheries adjacent to the northeast coasts of British North America. It also rendered awards in the famous cases of McLeod and the brig *Creole*. Its first session was held in London, September 15, 1853; its last, January 15, 1855.

By the treaty between the United States and Great Britain of June 5, 1854, in relation to Canadian fisheries and commerce, provision was made for the adjustment

of any disputes as to the exclusive right of British fishermen under the treaty, by a commission to be composed of a person appointed by each government, and an umpire.

Ten years lacking a week after the adjournment of the commission under the convention of 1853, a British-American commission, similar in constitution, met in Washington, under a convention concluded July 1, 1863, to determine the compensation due to the Hudson's Bay Company and the Puget's Sound Agricultural Company, two British organizations, on certain claims for damages, as well as for the transfer to the United States of all their property and rights in territory acknowledged by the treaty of 1846, in regard to limits west of the Rocky Mountains, to be under the sovereignty of that government. The commissioners, who met January 7, 1865, chose as umpire one of America's greatest judges and jurists, Benjamin Robbins Curtis; but his services were not required, since the commissioners on September 10, 1869, concurred in an award.

While this commission was sitting, the relations between the United States and Great Britain were seriously disturbed by controversies growing out of the civil war, the northeastern fisheries, and the disputed San Juan water boundary. All these menacing differences were composed by the treaty of Washington, of May 8, 1871, signed on the part of the United States by Hamilton Fish, Robert C. Schenck, Samuel Nelson, Ebenezer Rockwood Hoar, and George H. Williams; on the part of Great Britain, by the Earl de Grey and Ripon, Sir Stafford H. Northcote, Sir Edward Thornton, Sir John A. Macdonald, and Montague Bernard. The right of

this treaty to be regarded as the greatest treaty of arbitration the world had yet seen was only emphasized by the fact that it provided for four distinct arbitrations, the largest number ever established under a single convention. Of the four arbitrations under the treaty of Washington, first in order and importance was that at Geneva, the noblest spectacle of modern times, in which two great and powerful nations, gaining in wisdom and self-control, and losing nothing in patriotism or self-respect, taught the world that the magnitude of a controversy need not be a bar to its peaceful solution. On the part of the United States, the arbitrator was Charles Francis Adams; on the part of Great Britain, Sir Alexander Cockburn. There were three other arbitrators, Count Frederic Sclopis, Jacques Staempfli, afterward President of Switzerland, and the Viscount D'Itajuba, respectfully designated by the King of Italy, the President of the Swiss Confederation and the Emperor of Brazil. The American agent was J. C. Bancroft Davis, the British agent, Lord Tenterden. Caleb Cushing, William M. Evarts, and Morrison R. Waite appeared as counsel for the United States. Sir Roundell Palmer, afterward Lord Selborne, appeared for Great Britain, assisted by Mountague Bernard and Mr. Cohen. How celebrated the names both of those who negotiated and of those who executed the treaty! The demands presented by the United States to the tribunal, arising out of the acts of Confederate cruisers of British origin, and generically known as the Alabama claims, were as follows:

1. Direct losses growing out of the destruction of vessels and their cargoes.
2. The national expenditures in pursuit of those cruisers.

3. The loss for the transfer of the American commercial marine to the British flag.

4. The enhanced payments of insurance.

5. The prolongation of the war, and the addition of a large sum to the cost of the war and the suppression of the rebellion.

As to classes 3, 4, and 5, Great Britain denied the jurisdiction of the tribunal, and also its power to decide as to its own competency, a question, as we have seen, raised by the same Government and determined against it under article 7 of the Jay Treaty. Without deciding this question, the Geneva tribunal disposed of these three classes by expressing an opinion that they did not, upon the principles of international law, constitute a good foundation for an award of compensation, and that they should be excluded from consideration, even if there were no difference between the two Governments as to the board's competency. In regard to the second class of claims, the tribunal held that they were not properly distinguishable from the general expenses of the war carried on by the United States; and further, by a majority of three to two, that no compensation should be awarded to the United States on that head. On claims of the first class, the tribunal awarded the sum of $15,500,000. Its first session was held December 15, 1871; its last, September 14, 1872.

The dispute as to the San Juan water boundary was referred to the Emperor of Germany, who rendered, October 21, 1872, an award in favor of the United States. Claims of British subjects against the United States, and of citizens of the United States against Great Britain (excepting the Alabama claims), arising out of injuries to persons or property during the civil war in the United

States, from April 17, 1861, to April 9, 1865, were referred to a mixed commission, composed of three persons respectively appointed by the United States, Great Britain, and Spain, which sat in the United States. The fourth arbitration under the Treaty of Washington, to determine the compensation, if any, due to Great Britain for privileges accorded by that treaty to the United States in the northeastern fisheries, was conducted by a commission of three persons—a citizen of the United States, a British subject, and a Belgian—which met at Halifax, June 15, 1877 and on the 23d of the following November (the American commissioner dissenting) awarded Great Britain the sum of $5,500,000.

From France we have several times obtained gross sums in settlement of our claims by direct negotiation. The single exception to this practice is the commission, composed of an American, a Frenchman, and a citizen of a third power, which sat in Washington from November 5, 1880, to March 31, 1884, and determined the claims of citizens of France for injuries to their persons and property during our civil war, and claims of citizens of the United States against France for like injuries during the war between that country and Germany.

With Spain, our experience in respect to the settlement of claims has been similar to that with France; but in the case of Spain we have had two arbitrations. The first, under a diplomatic agreement of February 12, 1871, touching claims growing out of the insurrection in Cuba, was effected by means of a mixed commission, composed of two arbitrators, an American and a Spaniard, and an umpire, a citizen of a third power, which met in Washington, May 31, 1871. The arbitrators concluded their

labors December 27, 1882; the last decision of the umpire bears date February 22, 1883. The second arbitration was the reference on February 28, 1885, to Baron Blanc, Italian minister at Madrid, of the question of the amount of damages to be paid by Spain for the admittedly wrongful seizure and detention of the American bark *Masonic*.

With our neighbor Mexico we have had two arbitrations, by means of mixed commissions, for the adjustment of miscellaneous claims, some of which were of great magnitude and importance. The first commission, under the treaty of April 11, 1839, was composed of two American and two Mexican commissioners, and an umpire, a citizen of Prussia. One of the American commissioners was William L. Marcy, a remarkable man, in regard to whom the forgetfulness of the present generation is to be lamented. The second commission, under the treaty of July 4, 1868, consisted of a board of two commissioners and an umpire, and lasted from July 31, 1869, to November 20, 1876, but some of the umpire's decisions were rendered after the labors of the commissioners were completed. Francis Lieber at one time, and Sir Edward Thornton at another, served in the capacity of umpire. A thousand and seventeen claims were presented by the United States, and 998 by Mexico, and their aggregate amount exceeded half a billion dollars. The aggregate amount allowed was about four millions and a quarter; but it has been charged that two of the principal awards in favor of the United States were procured by fraudulent evidence, and, pending an investigation of this charge, the United States has suspended the distribution of the money paid by Mexico upon them.

Besides adjusting miscellaneous claims by arbitration, the United States and Mexico have adopted a notable arbitral measure in the convention of March 1, 1889, by which a permanent board, denominated an International Boundary Commission, is established for the determination of questions growing out of changes in the course of the Rio Grande and the Colorado rivers, where they form the boundary. This provision, however, is but the consummation of arbitral stipulations for determining the boundary which are found in the treaties between the two countries of January 12, 1828; February 2, 1848; December 30, 1853; and July 29, 1882.

The most remarkable, however, of all the arbitral agreements between the United States and Mexico is that found in the twenty-first article of the treaty of February 2, 1848, commonly called the treaty of Guadalupe Hidalgo, to which, as a general obligation to arbitrate, all subsequent arbitral arrangements between the two countries may in a measure be referable. This article reads as follows:

If unhappily any disagreement should hereafter arise between the Governments of the two republics, whether with respect to the interpretation of any stipulation in this treaty, or with respect to any other particular concerning the political or commercial relations of the two nations, the said Governments, in the name of those nations, do promise to each other that they will endeavor, in the most sincere and earnest manner, to settle the differences so arising, and to preserve the state of peace and friendship in which the two countries are now placing themselves, using, for this end, mutual representations and pacific negotiations. And if, by these means, they should not be enabled to come to an agreement, a resort shall not, on this account, be had to reprisals, aggressions, or hostility of any kind, by the one republic against the

other, until the Government of that which deems itself aggrieved shall have maturely considered, in the spirit of peace and good neighborship, whether it would not be better that such difference should be settled by the arbitration of commissioners appointed on each side, or by that of a friendly nation. And should such course be proposed by either party, it shall be acceded to by the other, unless deemed by it altogether incompatible with the nature of the difference, or the circumstances of the case.

Let us hope that in committing themselves, as peculiarly befits neighboring and friendly states, to arbitration as a principle, the people of the United States and Mexico have adopted a policy which they will liberally extend to other nations.

The United States and Haiti have had three arbitrations. By a protocol signed May 24, 1884, they referred to the Hon. William Strong, formerly one of the justices of the Supreme Court of the United States, two claims against Haiti, known as those of Pelletier and Lazare, involving questions of administrative and judicial precedure. The awards, dated June 13, 1885, were adverse to Haiti. But the United States has thus far declined to enforce them on the ground that in the case of Lazare the award was shown by alleged after discovered evidence, which the arbitrator himself declared to be material, to have been unjust; and that, in the case of Pelletier, the arbitrator erroneously conceived and declared himself to be compelled by the terms of the protocol to award, on a single question of strict law, compensation upon a claim which he obviously regarded as immoral and unjust.

On March 7, 1885, the American minister at Port au Prince and the Haitien minister of foreign affairs agreed upon a mixed commission of two Americans and two

Haitiens to adjust the claims of citizens of the United States growing out of civil disturbances in the island. The labors of the commission were completed on the 24th of the following month.

While these claims were pending, the imprisonment of C. A. Van Bokkelen, a citizen of the United States, at Port au Prince for debt, and the decision by the Haitien courts that because he was an alien he could not obtain his liberty by an assignment for the benefit of his creditors, occasioned a dispute both as to the treaty guaranty of full legal rights to citizens of the one country in the jurisdiction of the other, and as to the finality of the denial by the Haitien tribunals of a claim of right made in virtue of an international obligation. Under a protocol signed May 22, 1888, Mr. Alexander Porter Morse, of the city of Washington, who was named as arbitrator, rendered December 4, 1888, an award adverse to Haiti and allowed the claimant suitable damages.

Only once have members of onr arbitral boards been charged with fraud. But the conduct of the claims commission at Caracas, under the convention of April 25, 1866, was so seriously impeached that the United States and Venezuela, by a treaty concluded December 5, 1885, agreed to have the claims reheard by a new commission. This commission, composed of an American, a Venezuelan, and a third commissioner chosen by the other two, who was also an American, sat at Washington from September 3, 1889, to September 2, 1890. Its proceedings were characterized by a conscientious and impartial discharge of duty.

With Colombia there have been three mixed commissions, each composed of two commissioners and an

umpire. The first and second were organized under conventions concluded September 10, 1857, and February 10, 1864, and before both of them came important cases touching our rights on the Isthmus of Panama under the treaty with New Granada of 1846. The third commission, appointed under a diplomatic agreement of August 17, 1874, awarded the sum of $33,401 for the capture of the American steamer *Montijo* by insurgents in the State of Panama. For the adjustment of miscellaneous claims, we have also had two similarly constituted commissions with Peru under conventions of January 12, 1863, and December 4, 1868; one with Costa Rica, under the treaty of July 2, 1860, and one with Ecuador, under the treaty of November 25, 1862. Besides joining with Peru in mixed commissions, the United States by a convention concluded December 20, 1862, agreed to refer two claims against that Government for the seizure ard confiscation of the vessels *Georgiana* and *Lizzie Thompson* to the King of the Belgians. His Majesty, however, declined the trust, and on July 9, 1864, Mr. Seward, then Secretary of State, informed the Peruvian minister in Washington that the United States would not pursue the subject further.

After first making a naval demonstration, the United States by a convention signed February 4, 1859, agreed to arbitrate the claim made against Paraguay by the United States and Paraguay Navigation Company. A commission composed of a representative of each Government decided August 13, 1860, that the claim was not well founded. On the ground that the convention admitted liability and that the commissioners, by going into the merits of the case, had exceeded their competency, the

United States repudiated the award, and has since endeavored to settle the claim by negotiation.

Another arbitration not permitted to end agitation was the submission to Louis Napoleon, under a treaty signed February 26, 1851, of the claim made by the United States against Portugal for the latter's nonfulfillment of neutral duty, in suffering the destruction on September 27, 1814, in the port of Fayal, in the Azores, of the American privateer General Armstrong by a British fleet. The arbitrator held that the privateer was the aggressor, and made an award adverse to the claim. On various grounds, among which was the charge that the case of the United States was incompletely submitted, the claimant sought to have the award set aside. This course the United States very properly declined to take, but it subsequently paid the claimants from its own treasury. Another arbitration between the United States and Portugal, under a protocol signed in 1891, to which Great Britain is also a party, respecting the seizure by the Portuguese Government of the Delagoa Bay Railway and the annulment of its charter, is now pending before three Swiss jurists at Berne.

Under a convention concluded November 10, 1858, the United States and Chile referred to the King of the Belgians a claim growing out of the seizure of the proceeds of the cargo of the American brig *Macedonian* by the famous Lord Cochrane, founder of the Chilean navy. An award was made May 15, 1863, in favor of the United States.

As submissions of claims to foreign ministers, we may class that of the claim against Brazil for the loss of the whale ship *Canada*, to Sir Edward Thornton, British

minister at Washington, under a protocol of March 14, 1870; and that of the claim of Carlos Butterfield against Denmark, for the firing on one vessel and the detaining of another in the Danish West Indies, to Sir Edmund Monson, British minister at Athens, under a treaty signed December 6, 1888. In the case of the *Canada*, the award was favorable to the United States; in the case of Butterfield adverse.

II.—THE UNITED STATES AS ARBITRATOR OR MEDIATOR.

Besides submitting its own controversies to arbitration, the United States or its representatives have not infrequently discharged an arbitral or mediatorial function. On three occasions the arbitrator has been the President: (1) Under a protocol between Great Britain and Portugal of January 7, 1869, touching claims to the island of Bulama; (2) under a treaty between the Argentine Republic and Paraguay of February 3, 1876, to settle a boundary dispute; (3) under a treaty between Costa Rica and Nicaragua of December 24, 1886, to settle boundary and other questions.

On four occasions a minister of the United States has acted as arbitrator: (1) In 1873 the envoys of the United States and Italy at Rio de Janeiro rendered a decision upon the claim of the Earl of Dundonald, a British subject, against Brazil; (2) in the same year the minister of the United States at Santiago was appointed as arbitrator between Chile and Bolivia in respect to some disputed accounts; (3) in 1874 the minister of the United States at Rome determined a boundary dispute between Italy and Switzerland; (4) in 1875 the minister of the United States at Bogota rendered an award

on certain claims of Great Britain against Colombia.

The mediatorial services of the United States have been numerous. One of the most important is that performed by the Secretary of State in effecting, on April 11, 1871, between Spain on the one hand, and Chile, Peru, Ecuador and Bolivia on the other, an armistice which can not according to its terms be broken by any of the belligerents except after notification through the Government of the United States of its intention to renew hostilities. Another important mediatorial service was that rendered in 1881 to Chile and the Argentine Republic by the ministers of the United States at Santiago and Buenos Ayres, in effecting by the exercise of their good offices an adjustment of a long-standing boundary dispute.

III.— DOMESTIC TRIBUNALS FOR THE DETERMINATION OF INTERNATIONAL CLAIMS.

Besides being concerned in arbitrations, either as a party or as referee, the Government of the United States has often created tribunals under its own statutes, to execute conventional obligations and determine questions of law mainly international. In many instances claims of considerable number and magnitude have been settled for a gross sum, which this Government has undertaken to distribute; or else for a particular consideration, such as the cession of territory, it has undertaken to pay to a certain amount claims of its citizens against the government making the concession. In either case claims against the fund are valid only so far as they formed just demands against the foreign government under the principles of international law.

Tribunals of the type in question, created pursuant to treaty stipulations, have been as follows: Two under the

treaty with Spain of February 22, 1819, ceding the Floridas and one under the Spanish indemnity convention of February 17, 1834. There have been two under treaties with France, the first under the treaty of April 30, 1803, to ascertain claims against that Government which the United States had undertaken to pay; the second, under the treaty of July 4, 1831, to distribute an indemnity paid by France for spoliations. There have also been two under treaties with Great Britain, the first under the treaty of November 13, 1826, to distribute an indemnity paid for slaves carried away in derogation of Article 1 of the treaty of Ghent; the second, under the treaty of May 8, 1871, to distribute the Alabama award. The rest have been created to ascertain the beneficiaries of indemnities paid under the following treaties: Brazil, January 27, 1849; China, November 8, 1858; Denmark, March 28, 1830; Mexico, February 2, 1848; Peru, March 17, 1841; Two Sicilies, October 14, 1832.

IV. — SUMMARY.

Summarizing the results of our investigations we find that the Government of the United States has entered into forty-eight agreements for international arbitration; that it, or one of its representatives, has seven times acted as arbitrator, and that it has erected thirteen tribunals under its own laws to determine the validity of international claims; the total, therefore, of the arbitrations or quasi-arbitrations to which it has been a party is sixty-eight, to say nothing of agreements now pending, but as yet incomplete. Only two cases have been adduced in which it has acted as mediator, for the reason that instances of that character are so numerous and so diverse

that it would be impossible within the limits of the present paper to describe them.

The arbitrations of the United States have embraced many types of international controversy, and many highly important questions of law, both public and private. Not infrequently the questions in whose solution they have resulted were hotly discussed as just and almost necessary causes of war, involving national rights and national honor. If the contracting parties had resorted to force, they would perhaps never have realized how easily and honorably their differences might have been adjusted by reasonable methods. If the United States and Great Britain, instead of making the Treaty of Washington, had gone to war about the Alabama claims, which involved the rights and honor of both countries, and even the public legislation and the conduct of the public authorities of one of them, it is probable that many patriotic writers in both countries would now be engaged in showing how impossible it was to submit such questions to arbitration.

V.—GROWTH OF SENTIMENT IN FAVOR OF ARBITRATION.

The frequent adoption by the United States of the method of arbitration is in itself conclusive evidence of a very general sentiment, both in this country and abroad, in favor of the amicable settlement of international disputes. But, besides finding practical acceptance, this sentiment has disclosed itself in various impressive forms. It is probable that the many petitions and memorials which have during the last half-century been presented to the executive and legislative branches of the Government by respectable and influential bodies have had great

weight in determining the course of negotiations. As early as February, 1832, the senate of Massachusetts adopted by a vote of 19 to 5 resolutions expressive of the opinion that "some mode should be established for the amicable and final adjustment of all international disputes, instead of resort to war." In 1837 a resolution of similar purport was passed by the house of representatives of Massachusetts unanimously, and by the senate by a vote of 35 to 5. In 1844 the legislature of the same State adopted a resolution urging that a congress of nations be convoked to devise measures for putting an end to war. In 1852 the legislature of Vermont placed itself in line with that of its neighbor, in the advocacy of reasonable practices. In February, 1851, Mr. Foot, from the Committee of Foreign Relations, reported to the Senate of the United States the following resolution:

Whereas appeals to the sword for the determination of national controversies are always productive of immense evils; and whereas the spirit and enterprises of the age, but more especially the genius of our own Government, the habits of our people, and the highest permanent prosperity of our Republic, as well as the claims of humanity, the dictates of enlightened reason, and the precepts of our holy religion, all require the adoption of every feasible measure consistent with the national honor and the security of our rights, to prevent as far as possible, the recurrence of war hereafter: Therefore,

Resolved, That in the judgment of this body it would be proper and desirable for the Government of these United States, whenever practicable, to secure in its treaties with other nations a provision for referring to the decision of umpires all future misunderstandings that can not be satisfactorily adjusted by amicable negotiation, in the first instance, before a resort to hostilities shall be had.

Two years later Senator Underwood, from the same committee, reported a resolution of advice to the President—

To secure, whenever it may be practicable, a stipulation in all treaties hereafter entered into with other nations, providing for the adjustment of any misunderstanding or controversy which may arise between the contracting parties, by referring the same to the decision of disinterested and impartial arbitrators to be mutually chosen.

On June 13, 1888, Mr. Sherman, also from the Committee on Foreign Relations, reported to the Senate a concurrent resolution requesting the President—

To invite, from time to time, as fit occasions may arise, negotiations with any Government with which the United States has or may have diplomatic relations, to the end that any differences or disputes arising between the two Governments which can not be adjusted by diplomatic agency, may be referred to arbitration, and be peaceably adjusted by such means.

This resolution was adopted by the Senate February 14, 1890, and by the House of Representatives April 3, 1890. On June 16, 1893, the British House of Commons adopted a reciprocal resolution, expressing the hope that Her Majesty's Government would co-operate with the Government of the United States to the desired end.

In 1874 a resolution in favor of general arbitration was passed by the House of Representatives.

Of all the memorials and petitions presented to Congress on the subject of international arbitration, the most remarkable were those submitted in 1888, in connection with the communication made to the President and the Congress of the United States in that year by 233 members of the British Parliament urging the conclusion of a

treaty between the United States and Great Britain, which should stipulate "that any differences or disputes arising between the two Governments, which can not be adjusted by diplomatic agency, shall be referred to arbitration." This communication was re-enforced by petitions and memorials from a great number of associations and private individuals, from Maine to California. In the city of New York a public meeting was held to welcome a deputation of Englishmen who had come hither to present the communication; and a resolution was adopted, pursuant to which the mayor appointed a committee of five citizens, at the head of whom was the eminent publicist and law reformer, David Dudley Field, to urge upon the President and Congress the making of such a treaty as that described. This committee presented to Congress a memorial amply demonstrative of the beneficence of arbitration, both in theory and in practice.

In 1883 the Government of Switzerland proposed to the United States the conclusion of a convention for thirty years, binding the contracting parties to submit any differences between them to arbitration. Touching this proposal the President, in his message to Congress, said:

> The Helvetian Confederation has proposed the inauguration of a class of international treaties for the referment to arbitration of grave questions between nations. This government has assented to the proposed negotiation of such a treaty with Switzerland.

In 1890 an arbitration treaty was formulated by the International American Conference.

This treaty, both in its declaration of principles and in the precise and positive character of its stipulations, constitutes such a conspicuous and comprehensive acceptance

of arbitration, that its essential provisions should be quoted. They are as follows:

Believing that war is the most cruel, the most fruitless, and the most dangerous expedient for the settlement of international differences;

Recognizing that the growth of moral principles which govern political societies has created an earnest desire in favor of the amicable adjustment of such differences;

Animated by the conviction of the great moral and material benefits that peace offers mankind, and trusting that the existing conditions of the respective nations are especially propitious for the adoption of arbitration as a substitute for armed struggles;

Convinced by reason of their friendly and cordial meeting in the present conference, that the American Republics, controlled alike by the principles, duties, and responsibilities of popular government, and bound together by vast and increasing mutual interests, can, within the sphere of their own action, maintain the peace of the continent, and the good will of all its inhabitants;

And considering it their duty to lend their assent to the lofty principles of peace which the most enlightened public sentiment of the world approves.

Article I.

The Republics of North, Central, and South America hereby adopt arbitration as a principle of American international law for the settlement of the differences, disputes, or controversies that may arise between two or more of them.

Article II.

Arbitration shall be obligatory in all controversies concerning diplomatic and consular privileges, boundaries, indemnities, the right of navigation, and the validity, construction and enforcement of treaties.

ARTICLE III.

Arbitration shall be equally obligatory in all cases other than those mentioned in the foregoing article, whatever may be their origin, nature, or object, with the single exception mentioned in the next following article.

ARTICLE IV.

The sole questions excepted from the provisions of the preceding articles are those which, in the judgment of any one of the nations involved in the controversy, may imperil its independence. In which case, for such nation arbitration shall be optional; but it shall be obligatory upon the adversary power.

* * * * * *

Besides adopting this treaty, the conference made reports recommending arbitration to the nations of Europe and denouncing the principle of conquest. In transmitting these various documents to Congress the President very appropriately observed that the ratification of the measures proposed would "constitute one of the happiest and most hopeful incidents in the history of the Western Hemisphere." It is, therefore, to be regretted that this remarkable arbitration treaty, which admits the defense of national independence as the only justification of war, and in that case makes arbitration obligatory on the adversary power, has lapsed by reason of the failure of the contracting parties to exchange their ratifications within the period prescribed for that purpose.

Whatever the advocates of international arbitration may wish for, there are doubtless few, if any, even of the most ardent, who expect to bring about by that means the immediate and final abolition of war between independent peoples. Changes in the dispositions and conduct of men are wrought slowly and painfully, and

those who labor in the cause of progress and humanity must often suffer disappointment. Nevertheless, while it may at times be necessary to be superior to discouragement, it is gratifying to know that the principle we espouse is so beneficent and so efficacious that it commands the support of those who have been foremost as men of affairs.

It would be tedious to enumerate the statesmen of America who have expressed their faith by words or by acts in the principle of arbitration, and if we look abroad we find in the present generation such eminent names as those of John Bright, Mr. Gladstone, the Earl of Derby, Lord Lawrence, and the Marquis of Ripon. Nor should we forget that profound jurist and wise statesman of Italy, the late Mr. Mancini, who not only carried in the parliament of his country a resolution in favor of arbitration, but who also, as minister for foreign affairs, himself negotiated many treaties containing an arbitral stipulation.

It is the fashion of those who cavil at arbitration to argue that the variety of questions to which it may be applied is small. While we might refute this objection by recurring to the arbitrations of the United States, it is interesting to quote the words of President Grant, who said:

> Though I have been trained as a soldier, and have participated in many battles, there never was a time when, in my opinion, some way could not have been found of preventing the drawing of the sword. I look forward to an epoch when a court, recognized by all nations, will settle international differences, instead of keeping large standing armies as they do in Europe.

Testing these words of a great soldier by the history

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